

ADULTS AND COMMUNITIES OVERVIEW AND SCRUTINY COMMITTEE
3 NOVEMBER 2015

PROGRESS WITH IMPLEMENTATION OF THE CARE ACT 2014

REPORT OF THE DIRECTOR OF ADULTS AND COMMUNITIES

Purpose of Report

- 1 The purpose of this report is to advise members of the Committee of progress with work undertaken as part of the implementation of Phase 1 of the Care Act and set out the implications of the Government's decision to delay the implementation of Phase 2 until 2020. The Committee are also asked to comment on a consultation exercise taking place on the proposal to charge a fee for arranging community care for those service users whose capital and assets are above a certain level, in accordance with provisions in the Act.

Policy Framework and Previous Decisions

- 2 The Care Act received Royal Assent in 2014 with Phase 1 to be enacted in April 2015 and Phase 2 to be enacted in April 2016. The Care Act built on recent reviews and reforms, replacing previous legislation, to provide a coherent personalised approach to adult social care in England.
- 3 The Care Act 2014 replaced the National Assistance Act 1948 and Charging for Residential Accommodation Guidelines (CRAG) which gave the Council the duty to charge for residential care services. The Care Act 2014 also replaced the Fairer Charging Guidance 2002 which set out how the Council should implement its power to charge for non-residential care services. The Care Act 2014 gave the Council the power to charge for all care services rather than a duty, as explained in paragraphs 20-24 below, and the Council has developed one charging policy which covers all adult social care services and is Care Act 2014 compliant.
- 4 Phase 1 of the Act consolidated and modernised the framework of care and support law; setting out some new duties for local authorities and partners, and new rights for service users and carers.
- 5 Phase 2 of the Act was intended to introduce significant funding reforms for adult social care; new duties for local authorities and new rights for self-funding people and service users. A self-funder is defined as an adult with eligible needs who has financial assets above the upper capital limit. The upper capital limit is set by the Government.
- 6 The Department of Health (DH) issued Care and Support Statutory Guidance for the Care Act in October 2014, and the Council implemented Phase 1 of the Care Act in April 2015. In February 2015 the DH issued additional draft Statutory Guidance for

Phase 2 of the Care Act and undertook a consultation exercise on that Guidance between February and March 2015. The Council participated in the consultation exercise and comments were fed back via national, regional and local forums.

- 7 In March 2015 the Health and Wellbeing Board considered a report on the implementation of Phase 1 of the Care Act, and the Adults and Communities Overview and Scrutiny Committee considered it as an information only item beforehand.
- 8 The Corporate Governance Committee considered a presentation on the risks around the implementation of Phase 2 of the Care Act implementation on 12 June 2015.
- 9 Following receipt of the Care and Support Statutory Guidance for the Care Act in October 2014, the Council undertook work to plan for the implementation of Phase 2 of the Care Act. However, on 17 July 2015 the Government issued a statement advising that Phase 2 of the Care Act would be delayed until 2020. Following that announcement the Council ceased all work relating to Phase 2 of the Care Act.
- 10 On 11 September 2015, the Cabinet decided that:-
 - (a) The progress made in implementing Phase 1 of the Care Act 2014 be noted;
 - (b) The action taken by the Director of Adults and Communities to continue to charge for care services since April 2015 be noted;
 - (c) The County Council's charging policy for care charges which has been revised to be compliant with the Care Act 2014 be approved;
 - (d) The work already completed and the expenditure already incurred by the Adults and Communities Department in preparation for the implementation of Phase 2 of the Care Act 2014 (now delayed by the Government until 2020) be noted;
 - (e) An eight week consultation exercise be held on the Adults and Communities Department's proposal to charge a fee for putting in place the arrangements for meeting eligible needs of those people whose capital and assets are over the upper capital limit defined in the Care Act;
- 11 It is proposed to introduce an 'arrangement fee' for those people whose capital and assets are over the upper capital limit of £23,250. An eight week public consultation exercise on this proposal commenced on 23 September 2015. This will inform the decision-making process, and ensure that the Council meets its common law consultation duties and responsibilities under the Equalities Act.
- 12 The outcome of the consultation will be reported to the Cabinet in January 2016 and subject to agreement by the Cabinet, any policy changes will be implemented from 1 April 2016.

Background

Implementation of Phase 1 of the Care Act

- 13 The Adults and Communities Department created a Care Act Programme Board, chaired by the Director of Adults and Communities and comprising senior stakeholders, and appointed a Head of Service in August 2014 to co-ordinate and manage the implementation of the Care Act in Leicestershire.
- 14 All of the essential requirements for Phase 1 were in place for April 2015. These included:-
 - (a) The Council's eligibility framework being aligned to the national eligibility criteria for adults and carers;
 - (b) The Council's Deferred Payments Scheme being aligned to the national Deferred Payments Scheme. This included charging compound interest and administration fees which cover the cost of operating the Deferred Payments Scheme;
 - (c) Working with Health colleagues to provide social care in prison settings;
 - (d) Aligning the Council's Carers Strategy and enhanced Carers support offer to the Statutory Guidance;
 - (e) Creation of a Designated Adults Safeguarding Manager post;
 - (f) The Adults Safeguarding Board undertaking responsibility for ensuring that safeguarding investigations are undertaken in Health settings;
 - (g) A referral mechanism to Independent Financial Advice for service users and members of the public being put in place;
 - (h) The Council's web pages being updated to enable better access to advice and information and improved reporting of delivery effectiveness.
- 15 An overarching Equality and Human Rights Impact Assessment (EHRIA) has been completed in respect of Phase 1. This identified EHRIA screening requirements for Information and Advice, Financial Advice, Social Care and Support in Prisons, Eligibility and Safeguarding. An EHRIA screening exercise is required in order to assess the likely impact on groups protected by the Equalities Act 2010 and the Human Rights Act 1998. These are all completed apart from Safeguarding, which will be considered by the Safeguarding Adults Board shortly.

Preparation for Phase 2 of the Care Act

- 16 The Government issued draft regulations and guidance in February 2015 for Phase 2 of the Care Act. It was expected that final guidance would be issued by the DH in October 2015 for implementation in April 2016.

- 17 From the draft regulations, Phase 2 would have included:-
- (a) A self-funder pathway to provide care and financial assessments for people funding their own care.
 - (b) Care Accounts for all people with eligible care needs whether supported by the Council or self-funding.
 - (c) Implementation of the Care Cap for all people with Care Accounts.
 - (d) An extended financial means test for all financial assessments.
- 18 Due to the complexities of the areas included in Phase 2 the Care Act Programme Board commenced planning well in advance to meet the April 2016 implementation date. This included work on the programme initiation document, project workstreams, staff briefings and planning for a Gateway Review.
- 19 Following the Government's announcement on 17 July 2015 that Phase 2 of the Care Act would be delayed until 2020 all work in this area has now ceased.

Duty/Power to Charge

- 20 Prior to 1 April 2015, the legislative framework for charging individuals for care within a residential setting was set out under the National Assistance Act (NAA) 1948 Section 22. The charging provision under Section 22 was framed as a duty which required the local authority to charge. As this was not a discretionary function there was no requirement to seek Cabinet approval for the charging policy.
- 21 In April 2015, the duty to charge for residential care was superseded by the Care Act 2014 Section 14. Under the Care Act 2014, the Government considers that charging for all forms of care and support should be discretionary; the Council no longer has a duty to charge for residential care services but has a power to charge. This means that a local charging policy will be needed for care and support in all settings.
- 22 The income generated from charging for residential care is currently £22 million per annum and allows the Council to continue to meet need in an environment where there are significant budgetary pressures. Without exercising its discretion to charge the Council would be at risk of significant financial pressures. For this reason the Adults and Communities Department has exercised its power to continue to charge for care services in all care settings. The County Solicitor and Director of Corporate Resources are in agreement with the approach.
- 23 Under the Fairer Charging Guidance 2002, charging for non-residential care services was a power rather than a duty, and there is no change to that under the Care Act.
- 24 A revised Charging Policy has been written and is attached as Appendix A to this report.

Proposed Charges for Arranging Services

- 25 Section 18 of the Care Act 2014 imposes on the Council a duty to meet an adult's needs for care and support if that person asks the Authority to meet his or her needs

(where the adult has eligible needs and assets above the upper capital limit set by the Government).

- 26 Section 14 of the Care Act 2014 allows the Council to charge for putting these arrangements in place. The Care and Support Statutory Guidance states that councils can charge an arrangement fee for providing non-residential care and support but not residential care. The fee must be set at a level that does not exceed the costs that the Council actually incurs, and is limited to the costs of negotiating and managing the contract with a provider and the administration costs incurred. No charge can be made for undertaking care and financial assessments.
- 27 The Care Act Programme Board has proposed that, from 1 April 2016, the Council charges a fee for arranging care services that meet in full the costs incurred. This recommendation is in line with the fee for administering the Deferred Payments Scheme. The Deferred Payment Scheme allows people to delay selling their home in their lifetime to pay for their care. By entering into an agreement a person can delay paying for their care and support until a later date (often after their death).
- 28 No charge is currently levied for arranging care services. The Council arranges non-residential care services for approximately 800 people whose capital and assets are over the upper capital limit, currently set at £23,250. These people will be directly affected by the introduction of the arrangement fee. If the Council introduces a fee for arranging non-residential care services, a transition period will be in place for people affected by the charge.
- 29 The Council's Charging Policy requires those people who are able to pay for their services to do so. The proposed charge is an extension of this policy and would enable the Adults and Communities Department to concentrate its resources on assisting more vulnerable service users.
- 30 The Council also supports people whose capital and assets are under the upper capital limit, but who have a large income and therefore pay the full cost of their care, for example, their weekly assessed maximum charge may be £180, but their cost of care is £150 so they pay the full £150. The County Solicitor has advised that the Council does not have power to charge these people for arranging care services.
- 31 A number of other councils already have an arrangement fee in place for people whose capital and assets are over the upper capital limit receiving care and support in the community. Fee levels depend on the elements included in the calculation and annual charges range from £100 in Nottinghamshire, £175 in Derby, £250 in Milton Keynes, £280 in York and £2,600 in Richmond on Thames.
- 32 Calculations completed thus far have indicated that the Council will need to charge people whose capital and assets are over the upper capital limit an annual fee of £236 for arranging their care and support other than in a residential setting. This fee is based on a detailed estimate of the actual cost to the Council and will be set in accordance with the requirements set out in the Care and Support Statutory Guidance 2014, and would be reviewed annually to ensure it covers the actual costs of arranging care.

Consultation

- 33 The eight week public consultation exercise commenced on 23 September 2015 and closes on 18 November 2015.
- 34 A consultation questionnaire has been sent to each person who currently has non-residential services arranged by the Council and whose savings are above the upper capital limit; the cohort directly affected by the introduction of the arrangement fee. The questionnaire is also available on the website at: www.leics.gov.uk/self_funder
- 35 Partner agencies, including voluntary organisations, service providers, and NHS organisations have been invited to contribute their views to the consultation, together with Healthwatch Leicestershire (the independent consumer organisation which helps represent the views of the public).
- 36 A consultation engagement event will be held at County Hall on 4 November 2015, starting at 10.30am. People will be able to hear about the proposals in more detail, ask questions and contribute their views to the consultation.

Resources Implications

- 37 The funding allocation from the DH for implementing the Care Act in 2015-16 is £5.63 million. Part of this allocation (£1.97million or 35%) related to the early assessment of self-funders towards the cap on care costs, which was due to come into effect 1 April 2016, but has now been delayed until 2020.
- 38 The impact of introducing a new charge for arranging care is expected to be in excess of £100,000 per annum additional income. The total income gained will be dependent upon the number of people affected by the charge who continue to take the service. Although the expected additional income is small in the context of the Adults and Communities Department's annual income budget of £35 million per annum, the proposed charge would require those people who are able to pay for their services to do so, and would enable the Adults and Communities Department to use its resources more effectively to assist vulnerable service users.
- 39 The Director of Corporate Resources and the County Solicitor have been consulted on the content of this report. Legal implications are also considered in more detail in the relevant sections above.

Background Papers

Department of Health Care and Support Statutory Guidance: Issued under the Care Act 2014 – October 2014

<http://ow.ly/Rp13p>

Report to the Health and Wellbeing Board: 12 March 2015 - The Care Act 2014 Progress Report on Implementation

<http://ow.ly/Rp1bs>

Report to the Corporate Governance Committee: 12 June 2015 – Risk Management Update

<http://ow.ly/Rp1iE>

Report to the Cabinet: 11 September 2015 – Progress with Implementation of the Care Act 2014 – Request for Consultation

[http://politics.leics.gov.uk/Published/C00000135/M00004230/A100044722/\\$8progresscareactimplementation.docxA.ps.pdf](http://politics.leics.gov.uk/Published/C00000135/M00004230/A100044722/$8progresscareactimplementation.docxA.ps.pdf)

Circulation under the Local Issues Alert Procedure

- 40 The Cabinet report dated 11 September 2015 was circulated to all members of the Council via the Members' News in Brief service.

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Appendices

- Appendix A: Leicestershire County Council Charging Policy for Care and Support.
Appendix B: EHRIA Screening Form Re Proposed Consultation.

Relevant Impact Assessments

Equalities and Human Rights Implications

- 41 The introduction of a charge where none was previously levied represents a significant change to the people affected by it. An EHRIA screening exercise is required in order to assess the likely impact on groups protected by the Equalities Act 2010 and the Human Rights Act 1998, and this will be prepared in time to inform the consultation exercise. A full EHRIA will be required to take account of the results of consultation and put in place any mitigation required to comply with the duties under these Acts. The EHRIA will accompany subsequent reports to the Adults and Communities Overview and Scrutiny Committee and the Cabinet.
- 42 A full consultation would assist the Cabinet with the exercise of its Public Sector Equality Duty under the Equality Act 2010. The Equality Act 2010 imposes a duty on the local authority when making decisions to exercise due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between people who have a protected characteristic and those who do not.

Partnership Working and Associated Issues

- 43 The Care Act Programme Board is engaging with partners including care providers, service users, carers and voluntary sector organisations to co-produce tools to

implement the Care Act in Leicestershire. Communications and training plans are being established to include all stakeholders including partners.

Risk Assessment

- 44 If a consultation is not undertaken to inform policy decisions regarding the possible implementation of a fee for arranging care for those people whose capital and assets are over the upper capital limit, the Council is at risk of not making a fair and lawful decision on the exercise of its discretion to charge.